

1 **RAINES FELDMAN LLP**

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8 Attorneys for Plaintiffs

9 TC Rich, LLC, Rifle Freight, Inc., Fleischer Customs Brokers, Richard G.  
10 Fleischer, and Jacqueline Fleischer

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 TC RICH, LLC, a California Limited  
14 Liability Company, RIFLE FREIGHT,  
15 INC., a California corporation,  
16 FLEISCHER CUSTOMS BROKERS, a  
17 sole proprietorship, RICHARD G.  
18 FLEISCHER, an individual, and  
19 JACQUELINE FLEISCHER, an  
20 individual,

21 Plaintiffs,

22 v.

23 PACIFICA CHEMICAL,  
24 INCORPORATED, a California  
25 Corporation, AQUA SCIENCE  
26 ENGINEERS, INC., a California  
27 Corporation, A/E WEST  
28 CONSULTANTS, INC., a Nevada  
Corporation, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. CV 15-4878 DMG (AGR<sub>x</sub>)

*Assigned to the Hon. Dolly M. Gee*

**FURTHER JOINT STATUS  
REPORT FOLLOWING  
MEDIATION HELD ON  
FEBRUARY 22, 2019**

Action filed: June 26, 2015  
Discovery cut-off: None set  
Trial date: None set

**AND ALL RELATED CROSS-ACTIONS**

1 This Further Joint Status Report follows the mediation held on February 22,  
2 2019, among all parties with mediator Timothy Gallagher.

3 A full day session was held and attended by plaintiffs, third-party intervenor  
4 13301 S. Main Street, LLC, and defendant Pacifica Chemical, Inc.

5 The parties agree that, while a resolution was not reached, it was a productive  
6 initial mediation session and have agreed to a second session with Mr. Gallagher  
7 after Plaintiffs and Defendant Pacifica proceed with the following:

8 1. Amendment of Complaint

9 Under FRCP 14 and 15, Plaintiffs will file a motion for leave to file a first  
10 amended complaint to assert a citizen suit injunctive relief claim under the Resource  
11 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), against  
12 Pacifica, and a Comprehensive Environmental Response Liability Act  
13 (“CERCLA”), 42 U.S.C. § 9607, claim against Pacifica’s principal Hussain M.  
14 Shaikh (“Shaikh”), and its predecessor company, Shah Chemical Corporation  
15 (“Shah Chemical”). Plaintiffs allege that both were owners or operators of the  
16 Property during the time of the alleged disposal. Under Local Rule 7-3, Plaintiffs’  
17 counsel sent a meet and confer letter to counsel for both defendants and intervenors  
18 on February 21, 2019, and the amendment of the complaint was discussed by the  
19 parties at the mediation on February 22, 2019.

20 Pacifica will oppose the motion arguing the deadline for a request for leave to  
21 file an amended pleading or to add parties past three years ago—March 11, 2016.  
22 ECF No. 43; *but see* ECF 71 (vacating all previously scheduled dates and  
23 deadlines).

24 Plaintiffs also intend to serve Shaikh and Shah Chemical with RCRA Notices  
25 of Endangerment and Intent to File Suit, and Plaintiffs will thereafter promptly seek  
26 leave to file a second amended complaint to add RCRA claims against both parties  
27 after expiration of the mandatory 90-day waiting period, provided the parties have  
28 not addressed the contamination at the Property.

1 Intervenor 13301 S. Main Street, LLC, is separately evaluating the need for  
2 amendment of its complaint-in-intervention in light of the anticipated motion  
3 practice regarding amendment of the operative complaint. Any such amendment  
4 would be to add claims against existing parties or against the proposed additional  
5 parties referenced above.

6 2. Site Investigation and Remediation

7 The Department of Toxic Substances Control, the California environmental  
8 agency with jurisdiction over the Property, previously sent a Facility Initiated  
9 Corrective Action (“FICA) Agreement to Pacifica to establish its oversight over the  
10 investigation activities at the Property. Pacifica insisted that TC Rich, as the  
11 property owner, should be included as a party to that agreement. Pacifica is  
12 requesting that DTSC allow the ERD Pilot Test to proceed without a FICA  
13 agreement.

14 3. Timing and Return to Mediation

15 About eight months will be needed to conduct the ERD Pilot Test, the cost of  
16 which is approximately \$175,000 and for which Pacifica’s insurer has agreed to pay  
17 as a defense cost, and which Pacifica has agreed to perform.

18 While that ERD Pilot Test is on-going, as stated above, Plaintiffs will seek  
19 leave to file a first amended complaint to add the RCRA claim against Pacifica and  
20 also add Shaikh and Shah Chemical as named-defendants based on their ownership  
21 or operatorship of the Property at the time of disposal. Plaintiffs also anticipate  
22 seeking leave of this Court to file a second amended complaint to add RCRA claims  
23 against Shaikh and Shah Chemical following expiration of the 90-day notice period,  
24 by or before June 3, 2019.

25 Therefore, Plaintiffs request the Court temporarily lift the stay to allow  
26 Plaintiffs’ motion for leave to file a first amended complaint – to add RCRA claims  
27 against Pacifica and name Shaikh and Shah Chemical as defendants – to be filed,  
28 and request this Court’s ruling on that motion once all the documents have been

1 filed.

2 Plaintiffs further request the Court to again temporarily lift the stay to allow  
3 Plaintiffs' motion for leave to file a second amended complaint – for the limited  
4 purpose of adding RCRA claims against Shaikh and Shah Chemical – to be filed on  
5 or before June 3, 2019, and request this Court's ruling on that motion once all  
6 documents have been filed.

7 Pacifica opposes lifting the stay for this purpose as it believes there is no good  
8 cause for Plaintiffs' planned motions.

9 After that procedural step, Plaintiffs request that the Court grant a further stay  
10 of the entire action for the parties to return to mediation with Mr. Gallagher. The  
11 parties anticipate doing so in or about December 2019. The parties request the stay  
12 because they believe significant strides were achieved with Mr. Gallagher's  
13 assistance on February 22, 2019. Once the Court decides upon the efficacy of lifting  
14 the stay for purposes of motion practice, and rules upon the motions to amend, the  
15 parties will be better positioned to pursue an amicable resolution of the cleanup  
16 dispute, and the parties will also have the benefit of the ERD Pilot Study results by  
17 October 2019, which will further inform the parties' settlement discussions.

18 Dated: February 28, 2019

**RAINES FELDMAN LLP**

*/s/ John S. Cha*

\_\_\_\_\_  
John S. Cha

Counsel for Plaintiffs

23 Dated: February 28, 2019

**PALADIN LAW GROUP® LLP**

*/s/ Bret A. Stone*

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Bret A. Stone

Counsel for Defendant Pacifica Chemical  
Incorporated

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1 Dated: February 28, 2019

**FOLEY & LARDNER LLP**

2 */s/ Sarah A. Slack*

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4 Sarah A. Slack

5 Counsel for Plaintiff-Intervenor  
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